

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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JOHN A. ARETAKIS,

Plaintiff,

-against-

ROBERT DURIVAGE, TIMOTHY NUGENT, TOWN OF  
NORTH GREENBUSH AND ROBERT D. WELLS,

**Civil Action No. 07-Civ-5444**  
**(Hon. Shira A. Scheindlin)**

Defendants.

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR EXTENSION TO TIME  
TO ANSWER OR OTHERWISE MOVE BY DEFENDANT ROBERT D. WELLS**

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### **PRELIMINARY STATEMENT**

Defendant Robert D. Wells makes the instant motion for an extension of time to answer or otherwise move as against the amended complaint.

The plaintiff's initial complaint in this matter was filed on June 8, 2007. Costello Declaration, ¶ 4. On July 19, 2007, this Court ordered the plaintiff to promptly serve a summons and a complaint on the defendant. Costello Declaration, ¶ 5. In addition, the Court's July 19, 2007 order set forth an October 12, 2007 deadline for service of process, and added that the action would be dismissed if plaintiff failed to effectuate service by that time without a showing of good cause. *Id.* The plaintiff filed an amended complaint on October 11, 2007. That amended complaint, along with a summons, was served on October 12, 2007, via substituted service upon a member of Mr. Wells' household. Costello Declaration, ¶ 5.

Defendant Wells wishes to make a pre-answer motion to change venue and to dismiss the amended complaint. Costello Declaration, ¶ 7. Under the Court's Individual Practice Rules, an exchange letter must be sent to opposing counsel and a pre-motion conference must be held with the Court prior to the filing of such a motion. Costello Declaration, ¶ 7. On October 30, 2007, pursuant to Individual Practice Rule III (A), Defendant Wells forwarded an exchange letter to the plaintiff and requested a pre-motion conference and an extension of time within which to answer or otherwise move. Costello Declaration, ¶¶ 7, 9. The plaintiff has not consented to this request. Costello Declaration, ¶ 8. Pursuant to F.R.C.P. 12, the plaintiff's deadline to answer or otherwise move in connection with this matter is November 1, 2007. Costello Declaration, ¶ 11.

Therefore, Defendant Wells is constrained to move for an extension of time to answer or otherwise plead pending the required pre-motion conference.

### **ARGUMENT**

Rule 6(b)(1) of the Federal Rules of Civil Procedure reads, in pertinent part, as follows:

When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order.

Rule 12 of the Federal Rules of Civil Procedure, in turn, provides that unless a federal statute mandates otherwise, a defendant must answer or otherwise move in response to a summons and complaint within 20 days after being served with same. Because Defendant Wells was served with process on October 12, 2007, the instant motion for an extension of time to answer or otherwise plead is timely filed pursuant to F.R.C.P. 12.

Defendant Wells has good cause to make this application. The twenty days afforded by the Federal Rules of Civil Procedure simply have not given this defendant sufficient time to retain counsel, analyze the summons and amended complaint, ascertain the Individual Practice Rules of this Court, serve an exchange letter upon the plaintiff, and schedule a pre-motion conference in advance of this defendant's anticipated motion. In addition, the requested extension would not be prejudicial to the plaintiff; the United States District Court, Southern District of New York has held that prejudice (or lack

thereof) to an opposing party is appropriately considered by a court in determining good cause. *See Gordon v. Hunt*, 116 F.R.D. 313, 321 (S.D.N.Y. 1987).

Under F.R.C.P. 6(b)(1), this Court has discretion to grant the requested extension. Defendant Robert Wells respectfully requests that the Court exercise its discretion by granting him an extension of time to answer or otherwise plead pending the required pre-motion conference.

Dated: November 1, 2007

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